IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6755 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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MATHURDAS PARSHOTAMDAS VAGADIA - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MRS DT SHAH for the petitioner.
MS MITA PANCHAL, A.G.P. for Respondent Nos. 1,2,4,5 and 6.
MR G RAMKRISHNAN for MS RV ACHARYA for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/03/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has prayed for fixation of his pay in the cadre of Electrician in the pay scale of Rs. 380-600 (pre-revised later on

revised to Rs. 1350 – 2200).

2. The short facts leading to the present petition are that, the petitioner joined Government service in the year 1964 as Wireman. He was allocated to the Panchayat service in the year 1965 in the cadre of Wireman. He was thereafter promoted to the post of Electrician by order dated 21.06.1974. It is the case of the petitioner that upon promotion, his pay has been fixed in the Scale of Rs. 350-600 which is erroneous. The petitioner however agrees that for the post of Wireman in the Panchayat service the pay scale prescribed was Rs. 350-600. The petitioner has approached for getting pay fixation in the Higher Pay Scale of Rs. 380-600 (pre-revised) later on revised to Rs. 1350-2200. This demand of the petitioner is on the basis that in the government service, Wiremen draw the said pay scale. It is the case of the petitioner that duties and responsibilities performed by the petitioner and other Wiremen in Panchayat service is same as duties and responsibilities performed by the Wiremen in the State Government. It is on this basis that the petitioner has prayed for pay parity with his counter parts in the State Government.

3. Ms. D.T.Shah, learned Advocate for the petitioner urged that the petitioner is wrongly placed in the pay-scale of Rs. 350-600 (pre-revised). The respondents ought to have appreciated that the petitioner was erstwhile employee of the State Government and further that his duties and responsibilities being identical to those performed by Wiremen in the State Government, the petitioner had made out a clear case of disparity in pay-scales between identically situated employees.

4. Reliance was placed on an unreported judgment of this Court rendered by learned Single Judge on 08.12.1981 in the case of **Association of Class – III Employees v. State of Gujarat passed in Special Civil Application No. 1286 of 1979.** Reliance was also placed on the decision of this Court in the case of **Naroda Nagar Panchayat Karmachari Mandal and Ors. v. Shri Kanubhai Ratilal Patel reported in 1995(2) GLH 109** wherein the learned Single Judge was pleased to observe that there was no valid reason for withholding the salaries of the Panchayat servants since they are treated as Government servants.

5. On the other hand Ms. Panchal, learned Assistant Government Pleader opposed the petition. On the basis of

affidavit-in-reply dated 1st April, 2003, she contended that prayer of the petitioner for pay parity is not justified. She submitted that there is no case for equating the post in two different services and this Court in exercise of powers under Article 226 and 227 of Constitution of India should not undertake the task of comparing the pay-scales of different cadres. She placed reliance on the judgments attached with affidavit-in-reply which are unreported judgments of this Court. She placed reliance on the decision of the Hon'ble Supreme Court in the case of **Govt. of A.P. and another v. P.Hari Hara Prasad and others reported in (2002) 7 SCC 707** for the said purpose.

6. Mr. Ramkrishnan, learned Advocate appearing on behalf of Ms.R.V.Acharya, learned Advocate for Respondent No.3 also opposed the petition. He pointed out that the petitioner had received pay in the pay-scale prescribed for the post in question. His request for Higher Pay Scale is not justified.

7. Having heard the learned Advocates for the parties, it can be seen that the petitioner has been placed on certain pay-scales right from 1975, when he was promoted.

He made no grievance for years together. First legal step taken by the petitioner by filing present petition was in the year 1992. However, the question of pay fixation being a recurring cause of action, I do not propose to reject the petition only on the ground of delay and laches.

8. The main controversy is in the narrow compass. The petitioner does not dispute that he had received pay and allowances as per the scale prescribed for the post he was holding. His prayer however, is for being granted pay scale matching with pay-scale prescribed for Wiremen employed by the State Government. There is however, no material on record to equate two posts. The qualifications required for the respective posts, duties and responsibilities and work load in different services are also not before this Court. It is by now by settled by series of decisions of this Court and Hon'ble Supreme Court, that the Courts should be slow in examining the question of equality of posts and pay-scales which is primarily the task of the government to be performed through expert bodies such as Pay Commissions.

9. In the case of **State of Gujarat v. Saurashtra**

Mazdoor Sangh reported in 2004(2) GLH 50, a Division Bench of this Court observed that the equation of posts and determination of pay scales is the primary function of the executive and not of the judiciary. Therefore, ordinarily Courts will not enter upon the task of job evaluation, which is generally left to the expert bodies like the Pay Commission. It is further observed that specialized agencies would consider the question of equation of pay-scales and come to finding about particular pay-scales to be given to the post in question. The Court would be loathe to interfere with such conclusion which has been arrived at after a detailed exercise by an expert body like the Pay Commission or Expert Committee.

9.1 In the case of **Union of India v. P.V.Hariharan and Another reported in (1997) 3 SCC 568**, the Hon'ble Supreme Court made following observations:

> *"5. Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally*

acts on the recommendations of a Pay Commission. Change of pay scales of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enchancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enchanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one judicial Member. The Chairman of the Central Administrative Tribunal and the Chairman of the State Administrative Tribunals shall consider issuing appropriate instructions in the matters."

9.2 In the case of **Union of India v. Tarit Ranjan Das reported in (2003) 11 SCC 658**, the Hon'ble Supreme Court observed that the equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience,

confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equally relevant. It was further observed that the classifications made by a body of experts after full study and analysis of work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable.

9.3 In the case of **Deb Narayan Shyam and others v. State of West Bengal and others reported in 2005 AIR SCW 172**, the Hon'ble Supreme Court referred to number of decisions on the point and made similar observations.

9.4 In the case of **State of Haryana and others v. Charanjit Singh and others reported in 2005 AIR SCW 5632**, the Hon'ble Supreme Court referred to large number of decisions on the point, observed that principles of equal pay for equal work has no mechanical application in every case. It was further observed that party who claims benefit of said principle must make necessary averments and prove that all things are equal. It would not be necessary to burden the judgments with large number of decisions of the Hon'ble Supreme Court making similar

observations.

10. Suffice it to say in the present case there is no foundation laid by the petitioner to establish that the two posts- the post of Wireman in the Panchayat and in the State Government are identical in all respects. The duties, responsibilities, work load of the two posts, educational qualifications and experience required for the respective posts, all that has to be shown to be equal and identical. Duty is cast on the petitioner to do so. He has not discharged this heavy burden. The case of the petitioner for pay parity therefore, cannot be accepted. It may noted that the petitioner had been paid pay and allowances as prescribed by the Desai Pay Commission which recommendations were accepted by the State Government.

10.1 In the decision of **Association of Class -III Employees and others v. State of Gujarat and others (supra),** learned Single Judge found that no affidavit or evidence was produced on behalf of the State Government. It was further observed that:

> “From the facts narrated above, it is very clear that persons similarly situated are getting a higher pay scale i.e. Of Rs. 425-700. It also clearly transpires that persons serving in the post and who

> were getting lower pay-scales than the petitioners are put in the higher pay-scale as compared to the petitioner themselves. Therefore, this is certainly violative of Articles 14 and 16 of the Constitution of India."

10.2 The decision of **Association of Class -III Employees and others v. State of Gujarat and others (supra),** therefore, has no application to the present petition, the same being rendered in peculiar facts arising therein.

10.3 I see no relevance of the decision in the case of **Naroda Nagar Panchayat Karmachari Mandal and Ors. v. Shri Kanubhai Ratilal Patel (supra)** to the facts of present case.

11. In the result, I do not find that the petitioner has made out any case for interference. Rule is discharged. No order as to costs.

[Akil Kureshi, J.]

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